

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

JERRY GILLIAM,

Plaintiff,

Case No. 15-cv-11833

v.

Honorable Thomas L. Ludington
Magistrate Judge Patricia T. Morris

WILLIAM H. ORDIWAY, JR., and
MARVEILYN TALISIC ORDIWAY,

Defendants.

**ORDER ADOPTING REPORT AND RECOMMENDATION AND DENYING MOTIONS
FOR SUMMARY JUDGMENT**

On May 20, 2015, this suit was transferred from the District Court for the Western District of Missouri to the Southern Division of the Eastern District of Michigan. ECF No. 1. On March 24, 2016, the case was reassigned from the Southern Division to this Court. ECF No. 33. All pretrial matters have been referred to Magistrate Judge Patricia Morris. ECF No. 35. The parties are currently conducting discovery. During the spring of 2016, both parties filed motions, styled as requests for summary judgment, which argued that because the other party has refused to cooperate during discovery, judgment on the merits is appropriate. *See* ECF Nos. 37, 39, 40. The parties also filed a number of other discovery-related motions, including a motion to compel and a motion to proceed with discovery. *See* ECF Nos. 45, 49, 54, 66. On October 20, 2016, Magistrate Judge Morris issued an order resolving several of the discovery-related motions. *See* ECF No. 68. On the same day, Judge Morris also issued a report and recommendation. ECF No. 69.

In that report, Judge Morris explained that the disputes between the parties centered on discovery. Judge Morris explained that “the appropriate measure in response to a failure to comply with discovery rules is a motion to compel under Rule 37, not a motion for summary judgment.” *Id.* at 9. The Magistrate Judge concluded that neither Plaintiff nor Defendants had demonstrated the absence of genuine issues of material fact. Accordingly, Judge Morris recommended that the cross motions for summary judgment be denied.

Although the Magistrate Judge’s report explicitly stated that the parties to this action may object to and seek review of the recommendation within fourteen days of service of the report, neither Plaintiff nor Defendant filed any objections. The election not to file objections to the Magistrate Judge’s report releases the Court from its duty to independently review the record. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). The failure to file objections to the report and recommendation waives any further right to appeal.

Accordingly, it is **ORDERED** that the magistrate judge’s report and recommendation, ECF No. 69, is **ADOPTED**.

It is further **ORDERED** that the cross motions for summary judgment, ECF Nos. 37, 39, 40, are **DENIED**.

Dated: November 15, 2016

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on November 15, 2016.

s/Michael A. Sian
MICHAEL A. SIAN, Case Manager